

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 July 2024

DOCKET NUMBER: AR20230013127

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states following graduating as an honor graduate from advanced individual training (AIT) he was placed in a holding company along with other Soldiers. He was never told why or how long he would be in the holding company. As a young, newly married Soldier who was kept away from his family for an undetermined amount of time, he went home for a long weekend and returned late. Upon returning he was taken to the military police station and was informed he would be discharged. He did not notice his discharge until he recently requested a copy of his DD Form 214 (Certificate of Release or Discharge from Active Duty). He currently works for the Department of Defense on a U.S. Army Special Operations Command (USASOC) contract with an active Top Secret/Sensitive Compartmented Information (TS/SCI) security clearance. At the time of his separation he was not communicated to clearly what was going on and he dreamed of making the military his life career but it was cut short due to reasons outside of his control.
3. A review of the applicant's service record shows:
 - a. He enlisted Regular Army on 30 October 1997.
 - b. USAEREC Form 225 (Telephone or Verbal Conversation Record) shows that the applicant surrendered to military control on 5 October 1998 at Fort Knox, KY.

c. DA Form 4187 (Personnel Action) shows the applicant's duty status changed from dropped from rolls (DFR) to attached/present for duty, effective 5 October 1998.

d. DD Form 458 (Charge Sheet), preferred court-martial charges on 7 October 1998, for violation of the Uniform Code of Military Justice (UCMJ) for one specification of violating Article 86, on or about 19 August 1998, by absenting himself from his organization, located at Ft. Knox, KY, and did remain so absent until on or about 5 October 1998.

e. On 7 October 1998, he voluntarily requested discharge for the good of the service, in accordance with Chapter 10, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel). In his request for discharge, he acknowledged he understood if the discharge request were approved, he might be discharged under other than honorable conditions and be furnished an Other than Honorable Discharge Certificate. He also acknowledged he understood he might be deprived of many or all Army benefits, he might be ineligible for many or all benefits administered by the Department of Veterans Affairs, he might be deprived of his rights and benefits as a veteran under both Federal and State laws, and he might expect to encounter substantial prejudice in civilian life.

f. The applicant signed an admission of being absent without leave (AWOL). In the memorandum he acknowledged that he may be given an under other than honorable conditions discharge, his defense counsel explained to him and his complete understanding and satisfaction all the legal and social ramifications of an under other than honorable characterization of discharge and what it will mean to him in the future.

g. On 24 June 1999, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial and directed a discharge under other than honorable conditions.

h. He was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of court-martial with an under other than honorable conditions characterization of service, assigned a separation code of KFS, and reentry code 3. He completed 2 years, 1 month, and 5 days of active service. His DD Form 214 shows in:

- block 24 (Character of Service): Under Other than Honorable Conditions
- block 25 (Separation Authority): AR 635-200, Chapter 10
- block 29 (Dates of Time Lost During this Period): 19980507-19980524; 19980819-19981004

4. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. By regulation, AR 635-200, in effect at the time, states an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of her characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of being SWOL and dropped from the rolls.

2. The Board commends the applicant for his job accomplishments working for the department of defense. However, the applicant provided no character letters of support for the Board to weigh a clemency determination. The Board determined the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to an honorable discharge. Therefore, the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 635-5 (Separation Documents) states:
 - a. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.
 - b. For block 24 (Character of Service) the correct entry is vital as it affects a soldiers' eligibility for post-service benefits. Characterization or description of service is determined by directives authorizing separation. The entry must be one of the following: honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable, or uncharacterized.
3. Army Regulation (AR) 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a Soldier who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not being coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance

does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//